SUPREME COURT OF THE UNITED STATES

No. 96–8400

DOUGLAS MCARTHUR BUCHANAN, JR., PETITIONER *v.* RONALD J. ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[January 21, 1998]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

This case calls on us to decide whether the Eighth Amendment requires that a capital jury be instructed on the concept of mitigating evidence generally, or on particular statutory mitigating factors. We hold it does not.

On the afternoon of September 15, 1987, Douglas Buchanan murdered his father, stepmother, and two younger brothers. Buchanan was convicted of the capital murder of more than one person as part of the same act or transaction by a jury in the Circuit Court of Amherst County, Virginia. See Va. Code Ann. §18.2–31(7) (1996). A separate sentencing hearing was held, in which the prosecutor sought the death penalty on the basis of Virginia's aggravating factor that the crime was vile. See Va. Code §19.2–264.3 (1995).

In his opening statement in this proceeding, the prosecutor told the jury that he would be asking for the death penalty based on vileness. He conceded that Buchanan

had had a troubled childhood and informed the jury that it would have to balance the things in petitioner's favor against the crimes he had committed. App. 25–27. Defense counsel outlined the mitigating evidence he would present and told the jury that he was asking that petitioner not be executed based on that evidence. *Id.*, at 29. For two days, the jury heard evidence from seven defense witnesses and eight prosecution witnesses. Buchanan's witnesses recounted his mother's early death from breast cancer, his father's subsequent remarriage, and his parents' attempts to prevent him from seeing his maternal relatives. A psychiatrist also testified that Buchanan was under extreme emotional disturbance at the time of the crime, based largely on stress caused by the manner in which the family had dealt with and reacted to his mother's death. Two mental health experts testified for the prosecution. They agreed generally with the factual events of petitioner's life but not with their effect on his commission of the crimes.

In closing argument, the prosecutor told the jury that "even if you find that there was the vileness that you do not have to return the death sentence. I will not suggest that to you." *Id.*, at 43. While admitting the existence of mitigating evidence, and agreeing that the jury had to weigh that evidence against petitioner's conduct, the prosecutor argued that the circumstances warranted the death penalty. *Id.*, at 43–44, 57–58. Defense counsel also explained the concept of mitigation and noted that "practically any factor can be considered in mitigation." He discussed at length petitioner's lack of prior criminal activity, his extreme mental or emotional disturbance at the time of the offense, his significantly impaired capacity to appreciate the criminality of his conduct or to conform his conduct to the law's requirements, and his youth. Counsel argued that these four mitigating factors, recognized in the Virginia Code, mitigated Buchanan's offense. *Id.*, at

59–61, 64–66.

The Commonwealth and Buchanan agreed that the court should instruct the jury with Virginia's pattern capital sentencing instruction.[1] That instruction told the jury that before it could fix the penalty at death, the Commonwealth first must prove beyond a reasonable doubt that the conduct was vile. The instruction next stated that if the jury found that condition met, "then you may fix the punishment of the Defendant at death or if you believe from all the evidence that the death penalty is not justified, then you shall fix the punishment of the Defendant at life imprisonment." The instruction then stated that if the jury did not find the condition met, the jury must impose a life sentence. This instruction was given without objection. *Id.*, at 39.

Buchanan requested several additional jury instructions. He proposed four instructions on particular mitigating factors– no significant history of prior criminal activity; extreme mental or emotional disturbance; signifi-

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[1]The complete instruction is as follows:

"You have convicted the Defendant of an offense which may be punishable by death. You must decide whether the defendant should be sentenced to death or to life imprisonment.

"Before the penalty can be fixed at death, the Commonwealth must prove beyond a reasonable doubt that his conduct in committing the murders of [his family] was outrageously or wantonly vile, horrible or inhuman, in that it involved torture, depravity of mind or aggravated battery to the above four victims, or to any one of them.

"If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the requirements of the preceding paragraph, then you may fix the punishment of the Defendant at death or if you believe from all the evidence that the death penalty is not justified, then you shall fix the punishment of the Defendant at life imprisonment.

"If the Commonwealth has failed to prove beyond a reasonable doubt the requirements of the second paragraph in this instruction, then you shall fix the punishment of the Defendant at life imprisonment." App. 73.

cantly impaired capacity to appreciate the criminality of his conduct or to conform his conduct to the law's requirements; and his age. These four factors are listed as facts in mitigation of the offense in the Virginia Code.[2] Each of Buchanan's proposed instructions stated that if the jury found the factor to exist, "then that is a fact which mitigates against imposing the death penalty, and you shall consider that fact in deciding whether to impose a sentence of death or life imprisonment." *Id.*, at 75–76.[3] Buchanan also proposed an instruction stating that, "In addition to the mitigating factors specified in other instructions, you shall consider the circumstances surrounding the offense, the history and background of [Buchanan] and any other facts in mitigation of the offense." *Id.*, at 74. The court refused to give these instructions, relying on Virginia case law holding that it was not proper to give instructions singling out certain mitigating factors to the sentencing jury. *Id.*, at 39–40.

The jury was instructed that once it reached a decision on its two options, imposing a life sentence or imposing the death penalty, the foreman should sign the corresponding verdict form. The death penalty verdict form

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[2] "Evidence which may be admissible, subject to the rules of evidence governing admissibility, may include the circumstances surrounding the offense, the history and background of the defendant, and any other facts in mitigation of the offense. Facts in mitigation may include, but shall not be limited to, the following: (i) The defendant has no significant history of prior criminal activity, (ii) the capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance, . . . (iv) at the time of the commission of the capital felony, the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was significantly impaired, (v) the age of the defendant at the time of the commission of the capital offense . . . ." Va. Code Ann. §19.2–264.4(B) (1995) (amended, not in relevant part).

[3] The proposed instruction on age simply told the jury that petitioner's age "is a fact which mitigates" that the jury "shall consider."

stated that the jury had unanimously found petitioner's conduct to be vile and that "having considered the evidence in mitigation of the offense," it unanimously fixed his punishment at death. *Id.*, at 77. When the jury returned with a verdict for the death penalty, the court read the verdict form and polled each juror on his agreement with the verdict.

The court, after a statutorily mandated sentencing hearing, see Va. Code Ann. §19.2– 264.5 (1995), subsequently imposed the sentence fixed by the jury. On direct appeal, the Virginia Supreme Court reviewed Buchanan's sentence for proportionality, see Va. Code Ann. §17.10.1– 17.110.2 (1996), and affirmed his conviction and death sentence. *Buchanan* v. *Commonwealth*, 238 Va. 389, 384 S. E. 2d 757 (1989), cert. denied *sub nom.*, *Buchanan* v. *Virginia*, 493 U. S. 1063 (1990).

Petitioner then sought federal habeas relief. The District Court denied the petition. The Court of Appeals for the Fourth Circuit affirmed. 103 F. 3d 344 (1996). That court recognized that the Eighth Amendment requires that a capital sentencing jury's discretion be "'guided and channeled by requiring examination of specific factors that argue in favor of or against imposition of the death penalty'" in order to eliminate arbitrariness and capriciousness. *Id.*, at 347 (quoting *Proffitt* v. *Florida*, 428 U. S. 242, 258 (1976)). However, relying on our decision in *Zant* v. *Stephens*, 462 U. S. 862, 890 (1983), and on its own precedent, the court concluded that the Eighth Amendment does not require States to adopt specific standards for instructing juries on mitigating circumstances. 103 F. 3d, at 347. It therefore held that by allowing the jury to consider all relevant mitigating evidence, Virginia's sentencing procedure satisfied the Eighth Amendment requirement of individualized sentencing in capital cases. *Id.*, at 347–48. We granted certiorari, 520 U. S. __ (1997), and now affirm.

Petitioner contends that the trial court violated his

Eighth and Fourteenth Amendment right to be free from arbitrary and capricious imposition of the death penalty when it failed to provide the jury with express guidance on the concept of mitigation, and to instruct the jury on particular statutorily defined mitigating factors. This lack of guidance, it is argued, renders his sentence constitutionally unacceptable.

Petitioner initially recognizes, as he must, that our cases have distinguished between two different aspects of the capital sentencing process, the eligibility phase and the selection phase. *Tuilaepa* v. *California*, 512 U. S. 967, 971 (1994). In the eligibility phase, the jury narrows the class of defendants eligible for the death penalty, often through consideration of aggravating circumstances. *Id.*, at 971. In the selection phase, the jury determines whether to impose a death sentence on an eligible defendant. *Id.*, at 972. Petitioner concedes that it is only the selection phase that is at stake in his case. He argues, however, that our decisions indicate that the jury at the selection phase must both have discretion to make an individualized determination and have that discretion limited and channeled. See, *e.g.*, *Gregg* v. *Georgia*, 428 U. S. 153, 206–07 (1976). He further argues that the Eighth Amendment therefore requires the court to instruct the jury on its obligation and authority to consider mitigating evidence, and on particular mitigating factors deemed relevant by the State.

No such rule has ever been adopted by this Court. While petitioner appropriately recognizes the distinction between the eligibility and selection phases, he fails to distinguish the differing constitutional treatment we have accorded those two aspects of capital sentencing. It is in regard to the eligibility phase that we have stressed the need for channeling and limiting the jury's discretion to ensure that the death penalty is a proportionate punishment and therefore not arbitrary or capricious in its imposition. In contrast, in the selection phase, we have em-

phasized the need for a broad inquiry into all relevant mitigating evidence to allow an individualized determination. *Tuilaepa, supra,* at 971–973; *Romano* v. *Oklahoma,* 512 U. S. 1, 6–7 (1994); *McCleskey* v. *Kemp,* 481 U. S. 279, 304–306 (1987); *Stephens, supra,* at 878–879.

In the selection phase, our cases have established that the sentencer may not be precluded from considering, and may not refuse to consider, any constitutionally relevant mitigating evidence. *Penry* v. *Lynaugh,* 492 U. S. 302, 317–318 (1989); *Eddings* v. *Oklahoma,* 455 U. S. 104, 113–114 (1982); *Lockett* v. *Ohio,* 438 U. S. 586, 604 (1978). However, the State may shape and structure the jury's consideration of mitigation so long as it does not preclude the jury from giving effect to any relevant mitigating evidence. *Johnson* v. *Texas,* 509 U. S. 350, 362 (1993); *Penry, supra,* at 326; *Franklin* v. *Lynaugh,* 487 U. S. 164, 181 (1988). Our consistent concern has been that restrictions on the jury's sentencing determination not preclude the jury from being able to give effect to mitigating evidence. Thus, in *Boyde* v. *California,* 494 U. S. 370 (1990), we held that the standard for determining whether jury instructions satisfy these principles was "whether there is a reasonable likelihood that the jury has applied the challenged instruction in a way that prevents the consideration of constitutionally relevant evidence." *Id.,* at 380; see also *Johnson, supra,* at 367–368.

But we have never gone further and held that the state must affirmatively structure in a particular way the manner in which juries consider mitigating evidence. And indeed, our decisions suggest that complete jury discretion is constitutionally permissible. See *Tuilaepa, supra,* at 978–979 (noting that at the selection phase, the State is not confined to submitting specific propositional questions to the jury and may indeed allow the jury unbridled discretion); *Stephens, supra,* at 875 (rejecting the argument that a scheme permitting the jury to exercise "unbridled discre-

tion" in determining whether to impose the death penalty after it has found the defendant eligible is unconstitutional, and noting that accepting that argument would require the Court to overrule *Gregg*, *supra*).

The jury instruction here did not violate these constitutional principles. The instruction did not foreclose the jury's consideration of any mitigating evidence. By directing the jury to base its decision on "all the evidence," the instruction afforded jurors an opportunity to consider mitigating evidence. The instruction informed the jurors that if they found the aggravating factor proved beyond a reasonable doubt then they "may fix" the penalty at death, but directed that if they believed that all the evidence justified a lesser sentence then they "shall" impose a life sentence. The jury was thus allowed to impose a life sentence even if it found the aggravating factor proved. Moreover, in contrast to the Texas special issues scheme in question in *Penry*, *supra*, at 326, the instructions here did not constrain the manner in which the jury was able to give effect to mitigation.[4]

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[4]The dissent relies on an argument regarding the Virginia pattern sentencing instruction that petitioner belatedly attempted to adopt at oral argument. *Post*, at 2–5. This claim was waived, since petitioner expressly agreed to the pattern instruction at trial, the instruction was given without objection, and petitioner never raised this claim previously.

In any event, the dissent's theory does not make sense. The dissent suggests that the disjunctive "or" clauses in the third paragraph may lead the jury to think that it can only impose life imprisonment *if it does not find the aggravator proved*. But this interpretation is at odds with the ordinary meaning of the instruction's language and structure. The instruction presents a simple decisional tree. The second paragraph states that the Commonwealth must prove the aggravator beyond a reasonable doubt. The third and fourth paragraphs give the jury alternative tasks according to whether the Commonwealth succeeds or fails in meeting its burden. The third paragraph states that "if" the aggravator is proved, the jury may choose between death and life. The fourth paragraph states that "if" the aggravator is not proved,

Even were we to entertain some doubt as to the clarity of the instructions, the entire context in which the instructions were given expressly informed the jury that it could consider mitigating evidence. In *Boyde*, we considered the validity of an instruction listing eleven factors that the jury was to consider in determining punishment, including a catch-all factor allowing consideration of "[a]ny other circumstance which extenuates the gravity of the crime." 494 U. S., at 373–374. We expressly noted that even were the instruction at all unclear, "the context of the proceedings would have led reasonable jurors to believe that evidence of petitioner's background and character could be considered in mitigation." *Id.*, at 383. We found it unlikely that reasonable jurors would believe that the court's instructions transformed four days of defense testimony on the defendant's background and character "'into a virtual charade.'" *Ibid.* (quoting *California* v. *Brown*, 479 U. S. 538, 542 (1987)).

Similarly, here, there were two days of testimony relating to petitioner's family background and mental and emotional problems. It is not likely that the jury would disregard this extensive testimony in making its decision, particularly given the instruction to consider "all the evidence." Further buttressing this conclusion are the extensive arguments of both defense counsel and the prosecutor on the mitigating evidence and the effect it should be given in the sentencing determination. The parties in effect *agreed* that there was substantial mitigating evidence and that the jury had to weigh that evidence against

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the jury must impose life. The "if" clauses clearly condition the choices that follow. And since the fourth paragraph tells the jury what to do if the aggravator is *not* proved, the third paragraph clearly involves only the jury's task if the aggravator *is* proved. The fact that counsel and the court agreed to this instruction is strong evidence that the "misconception" envisioned by the dissent could result only from a strained parsing of the language.

petitioner's conduct in making a discretionary decision on the appropriate penalty. In this context, "there is not a reasonable likelihood that the jurors in petitioner's case understood the challenged instructions to preclude consideration of relevant mitigating evidence offered by petitioner." *Boyde, supra,* at 386; see also *Johnson,* 509 U. S., at 367.

The absence of an instruction on the concept of mitigation and of instructions on particular statutorily defined mitigating factors did not violate the Eighth and Fourteenth Amendments to the United States Constitution. The judgment of the Court of Appeals is

Affirmed.